

May 15, 2013

Dear Chairman Bramble and Chairman Dunnigan,

We are writing to express our support of efforts to strengthen the State of Utah's prohibition of the use of discretionary clauses in health, life, accident, long-term care, annuity, and disability income insurance contracts.

The use of discretionary clauses creates an illusion of insurance coverage for responsible Utahns who in reality are subject to the discretion of the insurer. They create a conflict of interest for the insurer, putting the insurer in the position of being both the entity that pays and the entity that decides whether an event does or does not need to be paid. In giving this ability for insurers to determine what events qualify for payment after the contract has been signed, discretionary clauses put consumers at an unfair disadvantage in any disagreement with their insurance company. Further, these clauses limit Utah consumers' ability to seek recourse from our courts if such a dispute arises.

Because of the unjust outcomes the result from discretionary clauses, the Utah Department of Insurance prohibited the use of these clauses in non-ERISA health and disability insurance market in 2002. However, our state can do much more to ensure that consumers are protected. Recent court decisions have made it clear that states have the authority to prohibit discretionary clauses in the insured ERISA market (vs. the self-funded ERISA market). Directing the Department of Insurance to expand Utah's existing prohibition to the insured-ERISA market will protect thousands of Utah families from arbitrary insurance decisions, eliminate the insurer's inherent conflict of interest and allow courts and other impartial arbitrators to determine what events require payment under an insurance contract. With these clauses prohibited insurers will be incentivized to review claims more fairly and the need for court appeals will be reduced.

Sincerely

Voices for Utah Children

AARP Utah

Legislative Coalition for People with Disabilities

Utah Statewide Independent Living Council

National MS Society—Utah-Southern Idaho Chapter

Michael E. Barrett, PhD, CEO of Center for Change Hospital and Treatment Programs

Utah Health Policy Project